

1 money, were you not?

2 A Perhaps, if there's enough --
3 enough to distribute, you know, but I wasn't -
4 - you know, he didn't owe me the money
5 personally as a consultant. It was the money
6 that was owed to Smartcomm as a business.
7 You know, Smartcomm has enough money to pay
8 every -- all its bills and expenses, and other
9 people. I'm the last one to get paid. So it
10 would depend.

11 Q And I think you indicated that
12 that sort of came to a head in the beginning
13 of 2008 vis-a-vis Smartcomm?

14 A Vis-a-vis Smartcomm. Yes, sir.

15 Q And what was your relationship
16 with him at that point, 2008? In other words,
17 your relationship with him continued on until
18 May of 2008.

19 A Well, I talked to him in two
20 thousand -- May of 2008, and as of the end of
21 February 2008, he wasn't honoring his
22 agreement with me personally. He wasn't

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1 honoring any verbal agreements that he had
2 with Smartcomm. So I would say the only
3 relationship we were going to have would -- we
4 would have followed in litigation.

5 Q And the agreement that you're
6 talking about with you, personally, is which
7 agreement? Or what agreements?

8 A The agreement that we had from
9 late -- from 1999 on as to how many shares
10 that he was going to own, how many shares
11 Bishop was going to own, and his wife. How
12 many shares Guskey was going to own. How many
13 shares I would have in a voting trust. That
14 agreement.

15 Q And is that separate and apart
16 from a consulting agreement?

17 A Well, I was to be issued the
18 shares based upon what I'd done up to that
19 point.

20 Q Which point?

21 A The voting trust was going to be
22 issued shares.

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1 Q Which point? Up to which point?

2 A Actually, it was pre auction 34.

3 Q Okay. And so your testimony is
4 that you, at this point you have only a
5 business relationship with him, which has
6 devolved into the possibility of litigation?

7 A I'd say a highly likely
8 probability of litigation. Virtual certain --
9 certainty, is what I would say.

10 Q Okay. All right. Well, you
11 touched on some of these points briefly
12 already. But can you describe your position
13 and responsibilities at PCSI. I guess I'll
14 throw in PAI too. Unless they're different.
15 And then take them some --

16 A Well, it depends on what time
17 period you're talking about, really.

18 Q All right. Let's break it down by
19 time period. Let's say right at the
20 beginning, you indicated that Preferred was
21 formed to acquire these licenses itself?

22 A Yes.

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1 Q And what was your -- were were
2 your responsibilities to Preferred at that
3 point?

4 A I gave them the idea, and
5 basically my role, my responsibility to
6 Preferred as to teach Jay Bishop as much as
7 possible about specialized mobile radio, so he
8 would have a background where he could go
9 forward, and Bobby Goldberg the same thing.

10 Give them some idea about how to
11 acquire these licenses without spending much,
12 if any money, on the front end. Mr. Austin
13 and I together, we figured out, came up with
14 the idea for the note schedule and royalty
15 interest, and then we had to convince Jay and
16 Bobby Goldberg that that was going to work,
17 and that took about two months.

18 Q And this is at the inception of
19 PCSI?

20 A Yes, sir.

21 Q And of course by PCSI, we mean
22 Preferred, right?

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1 A There wasn't a company back then.
2 This is --

3 Q We said the planning stage.

4 A Yes, sir. This is 1997. Then I
5 was asked to convince Chuck Guskey to, you
6 know, loan some money.

7 Q This is all pursuant to the
8 general agreement, that you guys are going to
9 create this entity and pursue it as a
10 business? The agreement you're talking about
11 is that agreement, right?

12 A Yes, sir. Basically, you know,
13 the idea was -- the discussion was they'd form
14 a licensed brokerage firm. Guskey would put
15 up some money. We'd start with Puerto Rico.
16 They would start with Puerto Rico. The idea
17 was just to get the site licenses in Puerto
18 Rico, package them up and sell them to
19 Telecellular, Inc.

20 I wanted them to do more than
21 that, and i tried to convince Matt and Jay,
22 and also Chuck Guskey, to go into other

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1 markets. Matt was interested in maybe doing
2 Hawaii. Jay and Chuck wouldn't do anything
3 else.

4 Q You wanted to convince them to do
5 more than that. More than buy licenses and
6 sell them, or more than --

7 A More than just Puerto Rico and the
8 Virgin Islands. Going to the other markets.

9 Q In other words, try to do the same
10 thing that you guys were contemplating doing
11 in Puerto Rico with Preferred, you wanted them
12 to do that in other areas as well?

13 A Yes, sir. Yes, sir. They would -
14 -

15 Q Okay.

16 A In the end, they wouldn't do that.

17 Q All right. So the question was
18 your position and responsibility at PCSI, and
19 we're breaking it down by time period. This
20 is at the inception of PCSI. How long did you
21 -- how long did those, what you viewed as your
22 responsibilities under that general agreement

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1 to create Preferred -- how long did that
2 continue?

3 A Up until about January of 1998.

4 Q Okay. And then how did it change
5 after that? If it did.

6 A Well, basically, for the rest --
7 and until about November of '98, I spent most
8 of my time working with Telecellular, Inc. --
9 most all my time working with Telecellular,
10 Inc. until I got fired. And then I worked in
11 a telemarketing center until August '98. and
12 then Chuck convinced me that he was going to
13 put in some money and I could get paid. And
14 then Matt decided to hire me on as a
15 consultant.

16 Q In 1998?

17 A In August '98. Yes, sir.

18 Q Okay.

19 A And of course the task then was
20 you had to construct the licenses and get them
21 preserved, and so I helped Matt with that from
22 September '98 until 1999.

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1 Q Did you have a formal consulting
2 agreement at that point?

3 A No. I tried to draft something.
4 I never could get one signed. I never got a
5 consulting agreement signed.

6 Q And that was due to his
7 reluctance? Not yours?

8 A He would never sign one.

9 Q Okay. Did you provide him drafts?

10 A Several times.

11 Q Okay. Yet you continued working
12 for the company?

13 A Well, yes, sir.

14 Q And was the company in existence
15 in 1998 at some point?

16 A January '98. Yes, sir.

17 Q January of '98?

18 A Yes.

19 Q Okay. And at that point you were
20 still educating them and --

21 A No. This is January '98. They
22 were on the phone, buying licenses. Yes, sir.

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1 Q Okay. And then at that point,
2 what were your responsibilities? What did you
3 view them, or what --

4 A I didn't have anything to do with
5 the company until about September '98. I sent
6 them some memos or something, ideas to think
7 about, but that was sort of hit and miss and
8 I wasn't spending much time on it. I was
9 trying to avoid my U.S probation officer, for
10 the most part.

11 Q Because you viewed those
12 activities might have been violative of your
13 probation?

14 A No. It's just I was just trying
15 to stay away from, to tell you the truth. I
16 was trying to survive and trying to get off
17 what you call unsupervised release unscathed.
18 She was very intrusive.

19 Q Okay. Did there come a time when
20 you violated that probation?

21 A In March 1999, I went down to
22 Puerto Rico to try to help the people that

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1 were being defrauded by Mr. Nemath and Mr.
2 Crane, and Mr. Wunshell decided to report me
3 to the U.S. probation officer. So, yes, that
4 was a violation of my --

5 Q For being down there?

6 A Yes.

7 Q And did you seek permission to go?

8 A No. I tried to -- tried to file
9 letters with the judge, and tried to work
10 things out with the probation, U.S. probation
11 officer and --

12 Q Beforehand?

13 A I tried several times, back in '96
14 and '97, and they weren't going to give me
15 permission to do anything.

16 Q So you ultimately just determined
17 that you weren't going to be successful
18 asking?

19 A Oh, I knew I wasn't going to be
20 successful asking, yes.

21 Q And then you just decided to go.
22 You felt it was necessary?

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1 A Well, March '99, the licensees in
2 Puerto Rico were looking at either
3 constructing their licenses within a very
4 short period of time, or they were going to
5 lose their licenses, and I was trying to help
6 them. Yes, sir.

7 Q Okay. So, at the point in
8 September of 1998, where you became more
9 formally involved with the company, what were
10 your responsibilities at that point?

11 A Our entire focus was on getting
12 financing, getting the equipment, getting it
13 delivered, getting it deployed, and having the
14 radios being able to comply with all the rules
15 of the Federal Communications Commission, and
16 getting everything done by December 28, 1998.
17 So that was -- I was all involved with that.

18 Q You mean the licenses that PCSI
19 had at that point?

20 A Yes.

21 Q Okay.

22 A Well, they weren't -- they filed

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1 to transfer the licenses to Preferred's name.
2 Okay.

3 MS. SINGH: I'm sorry, Mr. Waugh,
4 to interject here, but you just said at that
5 point our responsibilities were, and you
6 listed a bunch of things. Who do you mean by
7 our?

8 THE WITNESS: Preferred.

9 MR. OSHINSKY: Okay. All right.
10 Go ahead.

11 THE WITNESS: Sorry.

12 MS. SINGH: Sorry.

13 MR. OSHINSKY: That's all right.
14 I thought it would save time doing it that
15 way. All right. So go on. We interrupted
16 you.

17 THE WITNESS: Preferred had -- was
18 trying to transfer hundreds of licenses into
19 its name. They had numerous petitions to deny
20 against it. But you still had -- you know,
21 that wasn't going to be -- that you weren't
22 going to get a waiver because people had filed

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1 a petition. There was no extension of time.
2 So the entire focus of Mr. Austin and myself,
3 and Mr. Bishop, certainly, was to make sure
4 that the equipment got purchased, delivered,
5 deployed, tested, and everything was done.

6 So for the next four or five
7 months, that's all that we were doing.

8 Q Do you know how Mr. Austin viewed
9 your role at that point? If you know.

10 A I'm sure he thought I was a
11 consultant, helped -- I was supposed to help
12 him, any way that he believed was appropriate.

13 Q And were you being paid at this
14 time?

15 A No.

16 Q Okay. And were accruing bills at
17 this time?

18 A No.

19 Q So you viewed this as just a
20 generalized role, that he would ultimately
21 reward you how?

22 A Hopefully, we would be able to

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1 preserve the licenses and have something to
2 worry about, and I would end up owning,
3 through a voting trust a certain percentage of
4 the company.

5 Q Okay. And when did you visualize,
6 or when did you envision that you would end up
7 with that ownership?

8 A Didn't have any idea. It was --
9 if the licenses weren't constructed according
10 to the rules, there wasn't going to be
11 anything to worry about. So the whole focus
12 was on getting that done.

13 Q Okay. And how about after that
14 point? I understand that a number of licenses
15 were lost, some were recouped, and you found
16 yourself at the end of 1998, or in 1999 --
17 what position was Preferred in at that point?

18 A Well, Preferred was still thinking
19 that it had more than the 86 paired frequency,
20 the 86 licenses. It was thinking it still had
21 the 196. So what Matt wanted to do was to go
22 forward and raise money and try to build a

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1 system with the site licenses in Puerto Rico
2 and the Virgin Islands.

3 And he was working with David
4 Kaufman to get some rulings from the
5 Commission that would make it more feasible to
6 do that.

7 The idea was to hold an investors
8 meeting in Dallas and raise some interim
9 money, and then do a much larger offering
10 later in the year.

11 So there was a concentrated effort
12 to get investors to attend this meeting, which
13 was held on February 20, 1999, at the Crescent
14 facilities in Dallas, and about 30 or 40
15 people showed up.

16 Q And at the point where this
17 meeting took place, how many licenses were in
18 play for PCSI?

19 A Still the 196 at the time.

20 Q Okay. And then --

21 A They were lost, you know,
22 subsequently, subsequent to that.

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1 Q Do you know approximately when
2 they were lost?

3 A Preferred kept -- Preferred had
4 different filings with the Commission and the
5 Commission would rule against it, and it went
6 on for a year, year and a half.

7 Q Were the filings in relation to a
8 waiver?

9 A They were challenges to various
10 cancellations.

11 Q Okay. Had the litigation with
12 Telecellular been resolved at that point?

13 A No, sir.

14 Q Did it ever get resolved?

15 A Telecellular, Inc. finally
16 executed the settlement agreement and it
17 actually ended up filing for bankruptcy and
18 went out of business.

19 Q Telecellular filed for bankruptcy?

20 A Yes, sir.

21 Q And do you remember approximately
22 when that was?

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1 A May or June of 1999, I believe.

2 Q Do you know why they went out of
3 business?

4 A Well, they'd spent a whole lot of
5 money litigating with Preferred and they ran
6 out of money, and the investors wouldn't put
7 up any more money. Yes, sir.

8 Q Ultimately not a good business
9 plan.

10 A No, no. It didn't turn out too
11 well.

12 Q And okay. So at the point where
13 you were doing all the filings with the
14 Commission in 1999, your role there is what?
15 Were you drafting anything at that point?

16 A No.

17 Q Who's handling the legal side of
18 the proceedings with the Commission?

19 A Oh, Kaufman.

20 Q Entirely?

21 A Oh, yes.

22 Q Do you know where the money for

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1 that was coming from?

2 A It definitely had to be Chuck
3 Guskey.

4 Q And what role if any did you have
5 in Preferred then?

6 A I was help -- I was going to help
7 them try to raise some money. I attended the
8 investors meeting and basically sat and talked
9 to Chandu Patel for two-three hours.

10 Q Well, that's a good point, a good
11 starting point. Is that when you met Chandu
12 Patel?

13 A He was a client of Express. He
14 bought into some programs through a broker
15 that worked in Matt's Santa Monica office.
16 The guy's name was Glenn Geffcken. And Chandu
17 invested very little money. And Chandu was
18 just on a leads list, and he was contacted to
19 attend the investors meeting. Actually, Jay
20 Bishop called him and asked him to come to the
21 meeting.

22 Q And was there a presentation done

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1 at this meeting?

2 A There were several presentations
3 done at the meeting.

4 Q Did you do a presentation?

5 A Yes, sir.

6 Q And can you tell us briefly what
7 it was you were offering at that point.

8 A We were trying to raise -- I
9 believe Preferred was trying to raise about
10 \$300,000 in sort of an interim -- interim
11 money through like notes. But what happened
12 was Chandu decided he was very interested, and
13 then he put up -- buying stock, and put about
14 \$950,000.

15 Q At that point, in 1999?

16 A Yes, sir.

17 Q Okay. And then what happened
18 after that?

19 A In 1999?

20 Q Yes.

21 A Well, my supervised release got
22 revoked and I ended up being incarcerated for

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1 about six months. I got released from Federal
2 Medical Center in Fort Worth, Texas, on
3 January 14, 2000. So what they did in the
4 rest of 1999, from May '99, actually, on until
5 January 2000, I wasn't involved.

6 Q So whatever role you had there was
7 interrupted by --

8 A Certainly was.

9 Q Okay. In January of 2000, when
10 you were released, had the decision about
11 Preferred's licenses been made?

12 A Yes, sir.

13 Q Okay. And that decision again was
14 that they lost some 100 or so licenses?

15 A About a 110, yes.

16 Q And they dropped below the point
17 where they could have a viable footprint in
18 Puerto Rico?

19 A Yes, sir. And a couple months
20 later, the FCC comes out with a notice that
21 they're going to hold an auction for general
22 category licenses, and also shortly thereafter

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1 for the lower 80 channels.

2 And so Preferred either has to
3 sell the 86 site licenses it has, or it has go
4 into at least the general category auction.

5 Q And why do they have to, in your
6 view? Or your view at the time?

7 A Well, my argument was -- and
8 certainly Matt had the same position -- if
9 Nextel went into that auction and Nextel won
10 the geographic licenses, then basically all
11 you are is somebody who encumbers their
12 geographic licenses throughout the market.

13 You're going to have to sell and
14 get out of the way, and they're going to build
15 and operate a fine system, and that's going to
16 be the end of Preferred.

17 Q But there'd be revenue involved in
18 that, correct?

19 A Sure, sure. If you want to sell
20 and get out, that's -- you could have made a
21 few million dollars and divided it up among
22 you, and done something else.

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1 Q And at this point, how did you --
2 well, let me ask you this. Whose idea was it
3 to participate in the auction, which is
4 auction 34, is that right?

5 A Well, that was my -- it was my
6 recommendation and Mr. Austin decided he
7 wanted to pursue that, and Mr. Patel decided
8 he wanted to pursue that.

9 Q And at this point you have no
10 formal consultation agreement, correct?

11 A That's correct.

12 Q And how did you view your role at
13 that point?

14 A I was going to try to help them,
15 to see if we couldn't, as a group, try to win
16 that auction and come out way ahead.

17 Q And during the period of time
18 we're talking about, which would be '99 and
19 2000, I understand that you were incarcerated
20 for part of that -- how were you earning a
21 living?

22 A What?

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1 Q How were you living? How were you
2 making ends meet?

3 A Well, I was living with my wife,
4 who became my ex-wife, and living on very
5 little money.

6 Q Okay. How long a period of time
7 is that, that we're talking about?

8 A Well, actually, it started when I
9 was released from Leavenworth in February
10 1996, and it continued well on into 2003,
11 2004.

12 Q So were you being paid for that
13 period of time before you went to Leavenworth?

14 A I stopped being paid in July 1994.

15 Q And when you were -- in 1994?

16 A 1994.

17 Q Okay. So did you ever receive any
18 money from Preferred prior to being
19 incarcerated in Leavenworth?

20 A No.

21 MS. SINGH: Off the record.

22 (Whereupon, the above-entitled

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1 matter went off the record at 12:19 p.m. and
2 resumed at 12:20 p.m.)

3 THE WITNESS: Basically, I didn't
4 start getting paid by Preferred until May
5 1999. Those payments were discontinued in
6 October 1999. I got paid in January and
7 February of 2000. I wasn't paid after that
8 for some period of time. Lived on very little
9 money.

10 MR. OSHINSKY: Okay.

11 THE WITNESS: I mean, you can
12 basically go through the tax returns. It's
13 pretty -- that's pretty clear.

14 BY MR. OSHINSKY:

15 Q And when did you separate from
16 your wife?

17 A I filed for divorce in July 1999,
18 got divorced in March 2000.

19 Q All right. And why did the
20 payments stop in 1999 from Preferred?

21 A They decided not to pay me
22 anymore.

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1 Q Do you know why?

2 A I don't know why, just decided not
3 to pay me anymore.

4 Q Didn't you ask them why they
5 weren't paying?

6 A Well, I really wasn't in much of a
7 position to be asking them. I was locked up.

8 Q And after you got out, did you at
9 some point begin to be paid by them?

10 A We had money -- Preferred had
11 money in January and February of 2000, and
12 Preferred didn't have money after that to pay
13 me, and that was my -- that was my
14 understanding.

15 Q And was that because the money had
16 been spent at the auction?

17 A No. Just Preferred didn't have
18 any money. The auction didn't start until
19 August of 2000.

20 Q Okay. And how were you living at
21 that point? In 2000?

22 A Very meagerly.

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